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CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 920, 536 232 35.

THE UNITED STATES, APPELLANT,

v.

SIMON GOLDENBERG ET AL, COMPOSING THE CO-
PARTNERSHIP OF GOLDENBERG BROTHERS & COM-
PANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT.

FILED FEBRUARY 27, 1895.

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1 United States circuit court of appeals for the second circuit.

THE UNITED STATES OF AMERICA, APPELLANT, <i>against</i>	} (Suit "A," 647.)
SIMON GOLDENBERG, JULIUS L. GOLDENBERG, JOEL Goldenberg, Samuel L. Goldenberg, and Louis See- berger, composing the copartnership of Goldenberg Brothers & Company, in the matter of their impor- tations per "Servia," June 29, 1891, appellees.	

A judgment or decree of the circuit court of the United States for the southern district of New York having been made on the 30th day of July, 1894, and entered August 4, 1894, by which it was ordered, adjudged, and decreed that there was error in certain proceedings before the Board of United States General Appraisers in this that the protests herein were filed in due time and should have been entertained, and that the decisions of said Board herein be, and the same are hereby, in all things reversed, and that the merchandise involved in this suit or proceeding are dutiable, those composed of cotton at forty per centum ad valorem, under paragraph 355, and those composed of silk at fifty per centum ad valorem, under paragraph 414 of the tariff act of October 1, 1890; and an appeal having been taken from said judgment or

2 decree to this court by the above-named The United States of America, and the cause having come on for final hearing, a certain question of law arose concerning which this court desires the instruction of the Supreme Court of the United States for its proper decision. The facts out of which the question arose are as follows:

1. Certain merchandise was imported and entered for consumption by the appellees from a foreign country into the port of New York June 29, 1891, which merchandise was classified for customs duties at sixty per cent ad valorem by the collector of the port of New York as to certain articles thereof as silk laces under Schedule L, paragraph 413, of the tariff act of October 1, 1890; and as to certain other articles likewise at sixty per cent ad valorem, as cotton laces under Schedule J, paragraph 373, of the same tariff act.

2. The entry of the said merchandise was liquidated at the custom-house in New York City on July 16, 1891.

3. On July 21, 1891, a protest was filed by the appellees, importers, in the custom-house at New York City, in which they claimed that certain of the merchandise, viz, the silk veilings and nettings, involved herein were dutiable under Schedule L of the tariff act of October 1, 1890, at fifty per cent ad valorem as manufactures of silk not specially provided for.

4. On the same date, to wit, July 21, 1891, a protest was filed by the appellees, importers, in the custom-house at New York City, in which they claimed as to certain other of the merchandise, viz, cotton nettings, involved herein, that this merchandise was dutiable under the

3 provisions of Schedule I of the tariff act of October 1, 1890, at forty per cent ad valorem as manufactures of cotton not specially provided for.

5. The estimated duties on all of this merchandise were paid by the importers upon the entry of the goods; and an amount of increased duties

was found due by the collector and was not paid by the importers, appellees, until July 27, 1891, more than ten days after the liquidation of the entry as above, and also subsequent to the filing of all the protests above set forth.

6. The said protests were for this reason not entertained by the collector of the port, and were rejected on the ground that the importers had not complied with the requirements of section 14 of the act of June 10, 1890. (26 Stat. at L., 131, 137).

7. The protests above referred to were thereafter submitted by the collector of the port to the Board of U. S. General Appraisers sitting at this port, together with the entry and invoices, and said Board, on November 28, 1891, rendered a decision affirming the decision of the collector in the rejection of said protests and in the classification of the merchandise for duty.

8. From this decision of the Board of U. S. General Appraisers the importers, appellees, appealed to the circuit court of the United States for the southern district of New York by petition praying for a review of said decision pursuant to section 15 of the said act of June 10, 1890;

4 and the said circuit court upon said petition ordered the Board of U. S. General Appraisers to return to the circuit court the record and the evidence taken by them, together with a certified statement of the facts involved in the case and their decision thereon, pursuant to said section 15 of said act; and the said Board of General Appraisers thereafter made such return in response to the order of the court.

9. Evidence was taken in said circuit court before one of the said general appraisers as an officer of the court, showing that the merchandise involved was not known in trade and commerce as cotton lace or laces, nor as silk lace or laces, and such testimony was not contradicted by any evidence produced on behalf of the United States.

10. The case thereafter came on to be tried upon the record as above set forth before Honorable William K. Townsend, district judge, holding the said circuit court, who, deliberation being had, rendered an opinion filed June 29, 1894, reversing the decision of the Board of General Appraisers herein, and the judgment was thereupon made and entered as above set forth, from which decision and judgment the present appeal was taken by the United States to this court.

11. The contention as to the merchandise being, respectively, silk laces and cotton laces, as classified by the collector of the port, having been abandoned by the United States, it was conceded that if the protests above referred to should have been entertained by the collector the classification

5 of the merchandise involved should have been as claimed in said protests, respectively, under the tariff act of October 1, 1890.

Upon these facts this court desires instruction upon the question or questions of law for the proper decision of said cause, namely, as to the proper construction of section 14 of the act of Congress approved June 10, 1890 (26 Stat. at L., 131, 137), which is as follows:

"SEC. 14. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons

interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall within ten days after, "but not before," such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within ten days after the payment of such fees, charges, and exactions, if dissatisfied with such decision, give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon. Upon such notice and payment the collector shall transmit the invoice and all the papers and exhibits connected therewith to the Board of Three General Appraisers, which shall be on duty at the port of New York, or to a board of three general appraisers who may be designated by the Secretary of the Treasury for such duty at that port or at any other port, which Board shall examine and decide the case thus submitted; and their decision, or that of a majority of them, shall be final and conclusive upon all persons interested therein; and the record shall be transmitted to the proper collector or person acting as such, who shall liquidate the entry accordingly, except in cases where an application shall be filed in the circuit court within the time and in the manner provided for in section fifteen of this act."

Was the payment of the full amount of the duties ascertained to be due upon the liquidation of the entry of the merchandise, required to be made by the importers, as well as the giving notice of dissatisfaction or protest, within ten days after the liquidation of such duties, where the goods, as in the present case, were entered for consumption, in order to enable the protesting importers to have the exaction and classification reviewed by the Board of General Appraisers and by the courts? And to that end this court hereby certifies such question to the Supreme Court of the United States.

WM. J. WALLACE,
E. H. LACOMBE,
N. SHIPMAN,

*Judges of the United States Circuit Court of Appeals
for the Second Circuit.*

7 UNITED STATES OF AMERICA,
Second Circuit, ss :

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the cause entitled The United States of America, appellant, against Simon Goldenberg, Julius L. Goldenberg, Joel Goldenberg, Samuel L. Goldenberg, and Louis Seeberger, composing the copartnership of Goldenberg Brothers & Company, in the matter of their importations per "Servia," June 29, 1891, appellants (Suit "A," 647), was duly filed and entered of record in my office by order of said court on the 23rd day of February, 1895, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said United States circuit court of appeals for the second

circuit, at the city of New York, in the southern district of the State of New York, this 25th day of February, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

[SEAL.]

JAMES C. REED,

*Clerk United States Circuit Court of Appeals
for the Second Circuit.*

(Indorsement on cover :) Case No. 15804. Term No. 920. The United States, appellant, vs. Simon Goldenberg et al., composing the copartnership of Goldenberg Brothers & Company. U. S. circuit court of appeals, second circuit. Filed February 27, 1895. Supreme Court U. S. Received Feb. 26, 1895. Clerk's office.

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